

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6098 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SURENDRASINH DHIRSINH JADEJA

Versus

DISTRICT MAGISTRATE

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Appearance:

MR. V.H. PATEL ADVOCATE for Petitioner

MR. H.L. JANI, AGP, for Respondent No. 1, 2 & 4

MR. B.T. RAO, ADDL. CENTRAL GOVT. STANDING COUNSEL  
for Respondent No. 3

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CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 08/10/98

ORAL JUDGEMENT

By way of this Special Civil Application under Article 226 of the Constitution of India, the petitioner has challenged the order of detention dated 16.5.1998 passed by the District Magistrate, Sabarkantha, in exercise of powers conferred under sub-section (2) of Section 3 of the Prevention of Black Marketing and

Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as 'PBM Act') with a view to prevent him from acting in any manner prejudicial to the maintenance of supplies of Essential Commodities for Public Distribution Scheme essential to the community. Challenging the order of detention it is contended by Mr. V.H. Patel that the representation dated 22.7.1998 made by the detenu has not been decided and as such the continued detention of the petitioner is in violation of Article 22(5) of the Constitution of India. On the other hand it is contended by Mr. B.T. Rao, learned Addl. Central Government Standing Counsel that this is a case of successive representation. The petitioner submitted first representation on 24.5.1998, second representation on 20.6.1998 and the third representation on 22.7.1998. The third representation was submitted by the brother of the petitioner which has been decided. The representation of the detenu dated 22.7.1998 was not decided as there was nothing new therein. The learned counsel has placed reliance on a Division Bench decision of this court rendered in B.B. PITALIYA VS. DISTRICT MAGISTRATE reported in 35(1) G.L.R. 843. It is held therein that it would be necessary that specific averment is made if there was any fresh ground in the successive representations.

The learned counsel has produced both the representations dated 22.7.1998, one made by the detenu and the other made by the brother of the detenu. So far as the representation made by the brother of the detenu is concerned, in that a contention was raised that the wheat is not envisaged as an essential commodity in the order of 1981 and therefore, there was no question of committing any offence under Section 3 of the Essential Commodities Act. However, in the representation made by the petitioner additional ground taken is that the statements of the witness are not signed. Secondly copies of the ration cards are duplicate. Thus, it is submitted that it is wrong to say that the representation made by the detenu is identical to the representation made by the brother of the detenu. In view of this, it cannot be said that it is a case of successive representation. In affidavit dated 19.8.1998 filed by Mr. K.V.S. Rao, Under Secretary in the Department of Consumer Affairs, Ministry of Food and Consumer Affairs it is stated that the representation dated 22.7.1998 made by the detenu is received through jail authorities and the parawise comments from the State Government are awaited. This clearly shows that the representation made by the detenu has not yet been decided. However, at this stage Mr. B.T. Rao, learned Addl. Central Government

Standing Counsel has produced the original file and showed me telegram dated 6.8.1998 which reads as follows:-

STATE

SECRETARY,  
FOOD AND CIVIL SUPPLIES DEPARTMENT  
GOVERNMENT OF GUJARAT  
GANDHINAGAR

NO. 4(28)/98-ECR&E DATED: 6.8.1998

REFYOULET No. RJT/1198/1050/SPL. DATED 3.8

REGARDING REPRESENTATION OF SURENDRASINH DHIRSINH JADEJA DETAINED UNDER P.B. ACT, 1980 FOR REVOCATION OF HIS DETENTION ORDER (.) CENTRAL GOVERNMENT HAS CAREFULLY EXAMINED THE REPRESENTATION DATED 22.7.98 AND EXPRESSES ITS INABILITY TO ACCEDE TO THE REQUEST TO REVOKE ORDER OF HIS DETENTION BY EXERCISING ITS DISCRETION UNDER SECTION 14 OF THE SAID ACT AS THERE DO NOT APPEAR TO BE VALID SUFFICIENT GROUNDS FOR CENTRAL GOVERNMENT'S INTERVENTION (.) DETENU HAS ALSO BEEN INFORMED TELEGRAPHICALLY THROUGH SUPERINTENDENT CENTRAL PRISON SABARMATI.

POORTISAHAKAR

On the strength of this telegram it is submitted by Mr. Rao that the detenu's representation has been decided on 6.8.1998. It is also submitted that the telegram clearly mentions the representation of Surendrasinh Dhirsinh Jadeja. It is thus submitted that in fact the representation of the detenu has been decided on 6.8.1998. It may be stated that it is the representation of the brother of the detenu which has been decided on 6.8.1998, the averment made in the affidavit by Me. K.V.S. Rao is reproduced as follows:-

"Another representation dated 22.7.1998 made by brother of the detenu was received in the concerned section on 3.8.1998 from State Govt. Parawise comments on this representation were received on 5.8.98. After considering the representations dated 26.5.98 and 22.7.98 along with parawise comments of the State Govt. and other relevant records the same was rejected by the Competent Authority in the Central Government. The decision of the Central

Government was conveyed to Superintendent, Central Prison, Sabarmati on 23.6.98 and 6.8.98 by telegram with direction to convey the same to the detenu. The State Government was also informed simultaneously on the very same day. English version and parawise comments of the representation dated 22.7.98 made by the detenu and received through jail authorities are awaited."

The affidavit clearly shows that it was the representation of the brother of the detenu which was decided on 6.8.1998. The telegram also says regarding representation of Surendrasinh Dhirsinh Jadeja. The word 'regarding' clearly indicates that it was the representation with respect to the detention of Surendrasinh D. Jadeja. Therefore, on the basis of this telegram it cannot be aid that it was the detenu's representation which was decided. Be that as it may, if it was a decision on the representation made by the detenu there must be on record a decision on the representation made by the brother of the detenu. The learned AGP has not been able to show any decision in the file deciding the representation made by the brother of the detenu. It is unfortunate that the Addl. Central Government Standing Counsel has not been able to place a clear picture in this matter. It is expected that the things are not taken seriously by them.

As the representation of the petitioner has not been decided by the Central Government, the rights guaranteed under Article 22(5) of the Constitution of India are violated which make the continued detention of the petitioner illegal.

In view of the aforesaid, this Special Civil Application is allowed. The order of detention dated 16.5.1998 passed by the District Magistrate, Sabarkantha, is quashed and set aside. The petitioner shall be released forthwith if not required in any other case Rule made absolute to the aforesaid extent. It is stated by the learned counsel that the petitioner is at present in Central Jail, Sabarmati Central Prison, Ahmedabad. Writ be sent to the jail authorities of the said jail.

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